

Day One of Public Hearings

Session: An overview of those who miss out and fall through the cracks of a fair go for all

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The Historical Record

The record of Human Rights legislation and watershed events in the history of social justice: from Magna Carta in 1215 to the Univ. Declaration of Rights in 1948, from the abolition of slavery to the arrival of women's suffrage have been achieved by visionary leaders of oppressed people campaigning for a different set of values and corresponding freedoms. As a result of the impact of such campaigns legislation was passed, new language began to be used about people's identity and rights emerged which affected personal relationships and political processes. As soon as the struggle for civility and human rights achieved specific outcomes and the debate entered a new phases.

In the above account of struggles to achieve human rights, there were many players, not least the ordinary citizens who were to be the main beneficiaries. Lawyers and the courts, politicians and parliaments were there but it would be false to depict the debates or the campaigns as being between these two influences. In that respect the accounts of the current Australian consultations about a Charter of Rights as a contest between courts and parliament is a false reading of history. It produces a picture of a lawyers versus politicians ping pong match which ignores the interests of the people.

Vulnerable people: social and economic rights

In my accounts of vulnerable people who fall through the human rights net, I will be referring largely to social and economic rights. This mirrors the experience of the consultations about a Charter: the further they moved away from urban centres, the more peoples expressed concerns about social and economic rights.

Several themes characterize vulnerable people's experiences with 'rights' or rather their non-experience. (i) Human rights are contested in the interface between vulnerable people and representatives of authority, in bureaucracies, in courts, in police departments, in hospitals (ii) Decisions about individuals' entitlements revolved around interpretations of moral worthiness – the deserving or undeserving – and not on any clear appraisal of human rights (iii) A common human right which flows through all the encounters concerns the right to know. Such a right challenges a public policy tendency to ration resources by keeping the public in a state of ignorance.

Examples of the vulnerable people:

- (i) Families with severely disabled children. For families read the mothers. Largely fatalistic, regarding the birth of a child with a disability as a punishment or even as a mission to be pursued for the rest of their lives. Little sense of their identity being affected by human rights.
- (ii) Seriously ill patients who did not have private health insurance. Denied help in spite of the terms of the Medicare legislation or the human rights

implications of the Hippocratic Oath. Judgements about people being deserving affected access to medical services. Such bargaining continues in regional Australia where resources are limited and public teaching hospitals remote.

- (iii) Refugees and new migrants who come to our Centre's Refugee Language programme. They learn English by – among other things – copying clauses from the framed pictures of the Convention on the Rights of the Child and the Universal Declaration of Human Rights. In common with observations from US research about Americans with Disabilities, such awareness of rights 'gives confidence, transforms self image, alters perceptions of entitlements in relation to prospective employers and co-workers.'
- (iv) Overseas students who pay twice as much as Australian students but are disqualified from receiving any assistance with transport or health care. We claim to enjoy a human rights culture but then add insult to injury by saying that the spirit of universalism does not refer to citizens from overseas.

What Follows The Charter

If and when Australia introduces a Charter of Rights, two processes will have to occur for such a Charter to be taken seriously and to make a difference. (i) There will have to be an education programme affecting public servants, social workers, journalists, doctors, nurses, politicians, prison officers and lawyers including judges. Such a challenging and fascinating programme could also include high school and university students. (ii) A second process concerns the ongoing tension – sometimes but not always between the courts and the politicians – to interpret the aspirations for human rights and whether such rights clash with the sovereignty of parliament. In such tension the real sovereignty should accord with the needs and the will of the people.

The impressive and diverse consultations which have been underway across Australia about a possible Federal Charter of Rights are part of the struggle with the right to know and to achieve human rights. Once judgements have been made or claims accepted or turned down, the dialogue, the conversations, the conflicts about human rights will continue. Such a process nurtures democracy and facilitates the development of a human rights culture.

A Final Salvo

The diversity of the people and processes involved in struggles for human rights shows that it is far removed from being a struggle between courts and politicians. The protagonists who see the debate in those terms ignore the needs of vulnerable people. They display a parochial attitude which suggests that wisdom lies only between powerful people and institutions. They also display that same certainty which vulnerable people encountered when they were denied services, a certainty which smacks of authoritarianism which says, 'don't you worry about human rights, leave it to the experts, we know best you, trust us, the status quo works and should be maintained.'

Stuart Rees, Canberra, July 1st 2009